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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

LOUJAIN HATHLOUL ALHATHLOUL,)

Plaintiff,)

v.)

DARKMATTER GROUP,)
MARC BAIER,)
RYAN ADAMS, and)
DANIEL GERICKE)

Defendants.)

Civil No. 3:21-cv-01787-IM

**PLAINTIFF’S RESPONSE TO
DEFENDANTS’ NOTICE OF
SUPPLEMENTAL AUTHORITY**

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ NOTICE OF SUPPLEMENTAL
AUTHORITY**

Plaintiff submits this response to Defendants’ Notice of Supplemental Authority.¹ ECF 74. The supplemental authority cited by Defendants, *Briskin v. Shopify, Inc.*, No. 22-15815 (9th Cir. Nov. 28, 2023), shares little common factual ground with Plaintiff’s allegations. The court reasoned that Shopify did not expressly aim its conduct at California because the asserted basis of jurisdiction—that plaintiff used Shopify’s “nationally available” payment platform “while located in California” and suffered privacy-related harm in California because he “resided” there—improperly focused on the plaintiff’s contacts with the forum. ECF 74-1 at 4, 18.

By contrast, Alhathloul’s asserted basis of jurisdiction focuses on contacts Defendants *deliberately* created with the forum: (1) when they purposefully opted to deliver malware to her

¹ In order to limit this response to 350 words, Plaintiff only addresses the third “principle” cited by Defendants.

iPhone using Apple’s U.S.-based servers over other methods of delivery that would not have used U.S. facilities; and (2) when they knowingly exfiltrated data from her device while it was located in the United States.²

Unlike *Shopify*, jurisdiction here does not rely on Alhathloul choosing to use Defendants’ services in the jurisdiction. Alhathloul made no decision at all to interact with Defendants’ services. She did not choose to be spied on, let alone where to be spied on, or the modalities (Apple’s U.S. iMessage servers) Defendants chose to use to infect her iPhone. Her interaction with Defendants were controlled entirely by Defendants and completely unknown to her. That Defendants committed similar tortious actions against Alhathloul elsewhere does not obviate Defendants’ jurisdictionally meaningful contacts with the forum.

Dated: December 13, 2023

/s David Greene

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² Defendants stated in a prior pleading that Plaintiff alleges “no...‘actions’” taken by Defendants to exfiltrate data once it was infected with malware. ECF 73 at 13. This ignores the Amended Complaint’s allegations that Defendants controlled the malware installed on her device, including by “send[ing] commands to the malware that the malware executes,” and “command[ing] the malware to collect and transfer specific data” from the device. ECF 54 at ¶ 126.

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